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IN THE SUPREME COURT OF THE UNITED STATES

No. 1007-Misc.
OCTOBER TERM, 1965

IN THE SUPREME COURT OF THE UNITED STATES

MURIEL MAY SCOTT, née PLUMMER, PETITIONER
OCTOBER TERM, 1965

v.

IMMIGRATION AND NATURALIZATION SERVICE

MURIEL MAY SCOTT, née PLUMMER, PETITIONER,

v.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
IMMIGRATION AND NATURALIZATION SERVICE

MEMORANDUM FOR THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES

The sole question presented by this petition is whether petitioner is eli-

gible for relief from deportation under Section 2(a)(5) of the Immigration and

Nationality Act, 8 U.S.C. 1251(f). As the parent of a United States citizen

person ordered deported for having procured her entry into this country

and or misrepresentation, she would be entitled to relief under Section

if she was "otherwise admissible at the time of entry." The court be-

held, however, that she was not "otherwise admissible" because the quota

country from which she came--Jamaica, Br.

was over-

subscribed (350 F. 2d 279; Pet. App. A). It re-

quires "otherwise admissible" an alien must have been not only qualitatively, but also quanti-

tatively, admissible--i.e., that there must have been a visa available to her

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

under the applicable quota at

The instant decision is directly in conflict with a recent decision of the Ninth Circuit, holding that an alien admitted to this country on a fraudulently obtained first preference visa was "otherwise admissible" at the time of entry" even though at the time of entry the quota for the country from which he came (Italy) was substantially oversubscribed. Errico v. Immigration and Naturalization Service, 349 F.2d 911, 912 (9th Cir. 1965), certiorari granted, 380 U.S. 941 (1965).

MURIEL MAY SCOTT, nee PLUMMER, PETITIONER

No. 1007 Misc.

Y.

IMMIGRATION AND NATURALIZATION SERVICE

filling a petition for a writ of certiorari in Errico. As we explain in that

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

wise admissible. Errico v. Immigration and Naturalization Service, 349 F.2d 911, 912 (9th Cir. 1965), certiorari granted, 380 U.S. 941 (1965). As we also point

out, the problem is a continuing one in view of the preference system and numerical limitations in the recently enacted immigration legislation, Public Law 89-236, 79 Stat. 911, approved October 3, 1965. The "otherwise admissible" language here at issue remains in effect, and there will continue to be a number

MEMORANDUM FOR THE UNITED STATES

The sole question presented by the petition is whether petitioner is eligible for relief from deportation under Section 241(f) of the Immigration and Nationality Act, 8 U.S.C. 1251(f). As the parent of a United States citizen and a person ordered deported for having procured her entry into this country by fraud or misrepresentation, she would be entitled to relief under Section 241(f) if she was "otherwise admissible at the time of entry." The court below held, however, that she was not "otherwise admissible" because the quota of the country from which she came--Jamaica, British West Indies--was oversubscribed (350 F. 2d 279; Pet. App. A). It reasoned that to be "otherwise admissible" an alien must have been not only qualitatively, but also quantitatively, admissible--i.e., that there must have been a visa available to her

1/ Technically, she was deported under Section 241(a)(1), 8 U.S.C. 1251(a)(1), as excludable by the law existing at the time of her entry because she was not a "nonquota" immigrant as specified in her visa--a defect requiring exclusion at the time of entry under Section 211(a)(3), 8 U.S.C. 1181(a)(3). Pet. App. C. Petitioner, however, procured her nonquota visa by fraudulent representations as to her marriage to a citizen of the United States, and was excludable at the time of entry on this ground. Section 212(a)(19), 8 U.S.C. 1182(a)(19). Under these circumstances, deportation on the ground stated would be, in effect, deportation for having procured entry by fraud or misrepresentation. We therefore concede that she would be entitled to relief under 241(f) if she was "otherwise admissible" at the time of entry.

under the applicable quota at the time of entry.

The instant decision is directly in conflict with a recent decision of the Ninth Circuit, holding that an alien admitted to this country on a fraudulently obtained first preference visa was "otherwise admissible at the time of entry" even though at the time of entry the quota for the country from which he came (Italy) was substantially oversubscribed. Errico v. Immigration and Naturalization Service, 349 F. 2d 541 (C.A. 9). The government is contemporaneously filing a petition for a writ of certiorari in Errico. As we explain in that petition, it is important that this conflict as to the scope of the term "otherwise admissible" in Section 241(f) be resolved by this Court. As we also point out, the problem is a continuing one, in view of the preference system and numerical limitations in the recently enacted immigration legislation, Public Law 89-236, 79 Stat. 911, approved October 3, 1965. The "otherwise admissible" language here at issue remains in effect, and there will continue to be a number of aliens seeking relief under Section 241(f) who could not qualify under the decision of the court below because they are not "quantitatively" eligible for a visa at the time of entry.

Accordingly, we believe that the petition for certiorari herein should be granted, together with the government's petition in Errico, and that the two cases should be heard together.

Respectfully submitted.

THURGOOD MARSHALL,
Solicitor General.

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In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 832 54

IMMIGRATION AND NATURALIZATION
SERVICE,

Petitioner,

v.

GIUSEPPE ERRICO,

Respondent.

BRIEF IN OPPOSITION TO PETITION
FOR A WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE NINTH CIRCUIT

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